

https://doi.org/10.24035/ijit.27.2025.314			
Received:	22 October 2024	Accepted:	30 January 2025
Revised:	26 December 2024	Published:	15 June 2025
Volume:	27 (June)	Pages:	14-26.
To cite: Ahmet Ekşi & Hüseyin Okur. 2025. Medical 'will' as one of the end-of-life decisions. <i>International Journal of Islamic Thought</i> . Vol. 27 (June): 14-26.			

Medical 'Will' as One of the End-of-Life Decisions

AHMET EKŞİ* & HÜSEYİN OKUR¹

ABSTRACT

A medical will is a request that includes prospective health instructions for situations in which a person will lose the ability to make a will and make decisions. These requests are generally related to terminating treatments that do not help or terminating treatments connected to life support units. However, the fact that Islamic law limits the authority over the patient's body regarding treatment to the principles of "non-harm" or "benefit" hinders the legality of the patient's health-related instructions. Islamic law mandates that medical interventions for treatment require the patient's or their legal representative's permission, while the decision to terminate treatment rests with the physician. Although "medical wills" and death-related will transactions share a commonality of containing prospective requests, they are legally distinct. Therefore, it is impossible to find legitimacy for a medical will by citing a will, a death-related disposition. This study focuses on the roles of patients and physicians in end-of-life health decisions, explicitly addressing "medical wills." It will qualitatively explore this topic, drawing from classical and contemporary Islamic legal literature. Occasional comparisons with legal frameworks in Europe and Turkey will be made to reveal the Islamic legal perspective.

Keywords: Doctor, Islamic law, medical will, patient, treatment.

In Islam, great importance is given to human life, and the living and preservation of human life is adopted as one of the fundamental goals. In one of the Quranic verses related to the subject, it is decreed: "That is why we wrote to the Children of Israel: Whoever kills a soul, unless for a soul or corruption [done] in the land - it is as if he had slain humanity entirely. And whoever saves one - it is as if he had saved humanity entirely" (al-Quran, al-Maidah 5: 32). With the inference from these and similar verses, all material and spiritual measures have been taken to protect and guard human life. All interventions that end human life, except for the situations indicated by the verses, are prohibited (Shirazi 1995). In his sermon delivered in Mina during the Farewell Hajj, our Prophet expressed the inviolability of life with these words:

¹ **Ahmet Ekşi*** (Corresponding Author), Ph. D. Assoc. Professor, Department of Islamic Law, Kocaeli University, Kabaoglu, Baki Komsuoğlu bulvarı No:515, Umuttepe, 41001 İzmit/Kocaeli TURKIYE. Email: ahmet.eksi@kocaeli.edu.tr [ORCID iD: 0000-0003-3218-7837].

-Hüseyin Okur, Ph. D. Assoc Professor, Department of Islamic Law, Kocaeli University Kabaoglu, Baki Komsuoğlu bulvarı No:515, Umuttepe, 41001 İzmit/Kocaeli, TURKIYE. Email: huseyin.okur@kocaeli.edu.tr [ORCID iD: 0000-0003-4285-7478].

"O people! Just as your days are a sacred day, your months are a sacred month, your city (Mecca) is blessed, and so are your lives, property, and honor sacred. It is protected from all kinds of violations". (Tirmidhi 1996).

Human life is protected not only against dangers from outside but also against damages that may come from the right holder with commands such as "*Do not kill yourselves*" (al-Quran, al-Nisa' 4: 29.) and "*Do not throw [yourselves] with your [own] hands into destruction*" (al-Quran, al-Baqarah 2: 195.). This is called 'protection of personality, protection of the person against himself'. The prohibition of killing a person, even if he is on his deathbed, even if it is by his order (euthanasia) (Bilmen 1976), consent to death, suicide (al-Quran, al-Baqarah 2: 195; al-Bukhari 1422.), duels (Nasa'i 2001), and practical actions against body organs (Kasani 1996) is based on this principle. On the other hand, let alone causing his death, it is even forbidden for a person to wish for death or to pray for death. On this subject, the Prophet said:

"None of you should wish for death because of a harm that befell him. If he must do something, then let him say: 'O Allah, keep me alive as long as life is better for me, and let me die if death is better for me.'" (al-Bukhari 1422)

Attempts to end life unjustly have been prohibited, and those who violate this prohibition have been punished with otherworldly sanctions such as "committing a major sin" (Hanbal 2003), "...staying in hell forever..." (al-Quran, al-Nisa' 4: 93.), and worldly sanctions such as "*retaliation*" (al-Quran, al-Maidah 5: 45.), "*blood money, atonement*" (al-Quran, al-Nisa' 4: 92.), "discretionary punishment" (Awdah 2001) and "disinheritance" (Awdah 2001).

The principle of "protection of life", which is one of the interests that Islamic law aims to protect, also includes bodily integrity (Ramli 1984). Therefore, actions against the body, whether of a significant nature or not, are considered an attack on personal rights without the person's consent. However, the person's consent to interventions on his body has been accepted as lawful within the context of the "superior purpose" principle. The superior purpose here can be to save a person's life and health and the lives and health of other people (Awdah 2001.). The superior purpose includes blood and organ transplantation, as well as cutting off a gangrenous organ, health-giving or disease or disability-removing medical interventions (Shinqiti 1994).

As can be seen, all material and spiritual measures have been taken in Islam to protect and guard human life. On the other hand, Islamic law has held the individual responsible for protecting himself and sustaining his life. Therefore, it is permissible, and sometimes even obligatory, for a person to do religiously forbidden things to maintain his life, which is a means of testing (Qasim 1993). The idea of "sanctity of life" in the Islamic religion has given way to the understanding of "quality of life" along with euthanasia debates (Yasar 2003). Based on this idea, the issue of "a low-quality life not worth living" is being brought up (Özdemir 2013).

On the other hand, based on the principle of being able to make decisions about oneself with free will (autonomy), the physician-centered approach in medical decisions has been abandoned, and the last word has been left to the patient himself. Thus, the person has the right to decide on interventions for his body and health. However, in some cases, the person cannot express his wishes. Considering such situations, a method has been developed that allows the person to express his decision in writing in advance (Özdemir 2013). This method, which can be seen as a result of the perception of autonomy, has taken its place in the literature under names such as "medical will," "advanced treatment planning," "advanced health instructions," "pre-prepared patient directives," or "patient's future determination" (Tacir 2010).

In the guide prepared by the Council of Europe related to this subject, attention is drawn to the decision-making criteria that constitute another aspect of the subject, and it is stated:

Progress in the health field and advances in medicine—particularly developments in medical technology – enable life to be prolonged and increase survival prospects. By turning what used to be regarded as acute or rapid progression illnesses into chronic or

slow progression illnesses, they give rise to complex situations. They are unquestionably rekindling the debate on the end of life and the framework in which decisions are taken on medical treatment in end-of-life situations (Council of Europe, 2023).

In these uncertain and complex situations, which mainly concern the end of life, on the one hand, the patient's desire to be at the center of the decisions to be made, and on the other hand, the physician's treatment responsibility can conflict with each other. In such situations, the main thing is to fulfill the patient's desires and wishes as much as possible while avoiding personal opinions, sentimentality, and biased decisions and carrying out the treatment appropriately. In this case, it is essential to consider the physician's decision with "respect for expertise" rather than the patient's decision. Although there are minor problems in terms of legality when the patient's decision is taken into account, unilateral decisions of the patient or the physician are always open to discussion.

The primary purpose of this study is to determine the patient's and physician's authority and responsibilities in health-related decisions at the end of life. However, considering the breadth of its scope, the subject will only be discussed in the context of "medical will." In the study, the conceptual framework of the subject and its legal infrastructure will be defined based on classical sources. However, resources of related science branches will be utilized due to their relationship with other disciplines, such as positive law and medicine.

Conceptual Framework

Medical will is "the patient's verbal, written, and sometimes even witnessed the expression of what they want or do not want to be done to them at any stage of treating their chronic disease after losing decision-making capacity. These decisions are mostly about ending treatment that will not benefit the patient, not renewing when the lost functions cannot be regained, or not continuing life support treatments and artificial feeding (Türk Tabipler Birliği TTB 2023)." This concept, also translated into Turkish as "Advanced Health/Patient Instructions/Directives" or "Living Wills," "first appeared in the United States and was included in the Patient Self-Determination Act adopted in 1990. According to this Act, all health institutions and their members must provide written information about patients' rights to participate in decisions, refuse and accept treatment, and prepare advance directives. The law also stipulates that patients should be asked whether they have prepared advance directives and that no discrimination should be made against those who have not prepared them (Tacir 2010).

On the other hand, the provision related to the subject is as follows in Article 9 of the Biomedicine Convention: "The previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account (İnsan Hakları ve Biyotıp Sözleşmesi 2023)." In paragraph 3 of Article 3 of *the Amsterdam Declaration*, there is a regulation that if the patient cannot express his will and urgent medical intervention is needed, the patient's consent can be assumed, and intervention can be made unless there is a statement showing that he rejected this intervention before:

"When a patient is unable to express his or her will and a medical intervention is urgently needed, the patient's consent may be presumed, unless it is obvious from a previously declared expression of will that consent would be refused in the situation."
<https://bmop.pt/declaracaopelosdireitosdosdoentesnaeuropa.pdf>

All these can be interpreted as the patient's previously expressed wishes being valid."Medical will is a disposition made in advance for a future situation, and with his medical will, the person determines how he wants to be treated when he loses his discernment, in other words, which medical measures he consents to and which ones he rejects." (İmamoğlu 2016) Although it seems beneficial in terms of giving the patient the right to have a say in medical interventions to be made to him, it also brings some problems both legally and in terms of scope.

Legal Nature

The fact that instructions before death are expressed with the concept of 'will' makes the legitimacy of the process questionable from the outset. Because the will is defined as 'A person's transfer of a part of his property or a benefit to someone else to be valid after his death' (Ayni 1990), is a contract attributed to after death. Therefore, it is not valid while alive. Also, the subject of the will contract being 'property or benefit' does not seem accurate in terms of Islamic law to express decisions about the end of life with this concept.

Accepting a person's will on matters such as the appointment of the place where he will be buried and the person who will perform his prayer brings to mind that the will is not limited to property and benefit. Based on this thought, some scholars have defined the will as 'the order to dispose of it by attributing it to after death and to be charitable' (Zuhayli, 1997). However, they have linked the validity of such a will to the condition of not being contrary to the basic principles of religion. For example, a will about dispositions that are not considered permissible, such as burning the body after death or selling organs, will not be permissible. Because Islamic law, like the restrictions it imposes on the property, has limited dispositions over the human body with principles such as 'do not harm, provide benefit' (Mubarak 1997).

In terms of its legal nature, the will, being a non-binding disposition from the perspective of the testator, the testator can change his will or give up if he wishes while he is alive. After the testator's death, the will becomes binding, and it becomes obligatory for the executor, if not appointed, to fulfill the will to the remaining relatives. The patient unilaterally declares his request in a medical will, and the state asks the hospital staff or doctor to fulfill these requests. For the doctor, this situation being binding (especially if it contains a request that will clearly result in death) will damage the professional responsibility of the doctor, whose main goal is to save lives and be a means of healing (Mubarak 1997.), and at the same time, it will be a problematic and even invalid request in terms of Islamic law because it contains a death request. Because such a document will be invalid if a person gives up his right to life or signs a document containing a death request. Indeed, Caliph Mansur made a contract with the people of Mosul, which included the condition that all the people would be slaughtered if the people committed a crime that could be considered a crime by the caliph. When the people of Mosul attempted such a crime, the validity of the signed agreement came into question. Abu Hanifah, one of the period scholars, was also asked about this situation. Abu Hanifah stated that the agreement did not have a problem in terms of formal conditions but was based on the principle in Islam that 'People do not have the right to dispose of their own lives,' he stated that this agreement was void due to its content (Sava 1955). Therefore, there is no doubt that such a treatment contract concluded between the doctor or legal representative and the patient will be void if it includes a waiver of the right to life (Eksi 2011).

On the other hand, the fact that 'requests for pre-death dispositions and the logic of the classic will are similar' should not be overlooked. In the will, the person asks others to do this because he will not be able to fulfill his wishes after he dies. In contrast, in the medical will, the person -for example, does not want to be connected to the life support unit- expresses this request in writing in advance because he will not be able to express it at that moment. However, the fact that the will is limited to after death makes it impossible to include the medical will document given in writing in the scope of the classic will (Özdemir 2013).

As in many legal systems, Islamic law also allows a person to appoint a legal representative (agent) for himself and fulfill his wishes in this way. However, the power of attorney contract, defined as 'the replacement of another person in his place with mutual consent to do a representative job, based on his own competence' (Berki 1982), also seems problematic in terms of its suitability for medical will in terms of its conditions. Because the person who will give the power of attorney must have the competence to do the job, he transfers to someone else, the subject of the power of attorney must be at his own disposal (Berki 1982). The representation in the said application, which also includes decisions that threaten his life or accelerate his death, should be invalid because the person himself does not have such a right.

On the other hand, in the power of attorney contract, the agent undertakes a duty to perform a job against the principal. Therefore, 'not doing a job' cannot be the subject of power of attorney. Also, the termination of the power of attorney contract with the loss of the agent or the principal's disposal competence (Berki 1982) is an obstacle to appointing an agent in forward-looking instructions because the power of attorney contract will have ended automatically as the person loses his disposal competence during the implementation phase of these instructions.

Medical will also give the guardian the right to make decisions on his behalf in a situation where the person loses his consciousness, decision-making, or self-expression ability (Zarqa 1968). Therefore, when the person cannot express himself due to his illness, his guardian can execute his personal or financial rights on his behalf. However, the essential condition here is that all the dispositions of the guardian are in the interest of the person under guardianship. Any disposition against or harmful to the person under guardianship is invalid (Kasani 1996). In this sense, any guardian disposition that includes giving up the right to life should be considered invalid. Even if this transaction is seen as a guardianship, not a guardianship or power of attorney, it still cannot be said to comply with the law because the guardian appoints the guardian to take care of the affairs of those with limited competence or appointed by the court (Ali 2013). There is no such practice in medical instructions.

As a result, the fact that the will is a disposition linked to death, the formal conditions of the power of attorney and guardianship, and the fact that guardianship includes dispositions that can be in favor of the person show that forward-looking medical instructions are not suitable for these transactions in terms of the law. The feature that causes illegality in all these transactions is actually that Islamic law does not give the person the right to dispose of his life. In this case, even if it is with the person's request, it is not allowed to make a decision that will lead him to death. In this context, there is no opinion among the jurists that legitimizes the act of killing due to the permission of the person who was killed. We can group the opinions on this subject into three groups.

1. First opinion belongs to Ahmad b. Hanbal, Abu Hanifah, and Abu Yusuf (according to one of his two opinions). According to these scholars, permission reduces the penalty from the perpetrator. Retaliation, blood money, and atonement fall from the perpetrator. The evidence of this opinion is that the fact that permission is given raises doubt, and therefore, retaliation falls. No blood money is required, either. Because the right to blood money primarily belongs to the one who permits it with the evidence that 'it will be left to his own heirs when he dies.' Since the right has been established for the one who gives permission from the beginning, permission drops this right (Zahrah 1966). Those who say that permission prevents punishment -which Ahmad ibn Hanbal reports- consider permission as a pardon declared before the crime and consequently argue that the punishment will also fall (Sarakhsi 1993).
2. Second Opinion: Another group consisting of Abu Hanifah, Imamayn (according to their preferred opinions) (Tarabulusi 1973), Sahnun from Malikis, Shafi'is and Ahmad ibn Hanbal (according to his preferred opinion) stated that consent will drop retaliation, but it cannot drop blood money (Kasani 1996). The evidence of this opinion is that consent to death does not make murder permissible, but the perpetrator should respond to this request that, instead of committing murder, he should comply with the command of Allah, that is, refrain from killing. Although permission does not remove the inviolability of life, it causes doubt. According to the hadith of our Prophet, 'remove the penalties when there is doubt' (Tirmidhi, 1996), the limit falls (Zahrah 1966). The element that causes doubt here is permission. However, this doubt does not prevent blood money, so the perpetrator is given a blood money penalty. Because the inviolability of human

life is preserved. If the person who gives permission to be killed dies, the rights of the relatives do not disappear (Abidin 1982).

3. Third opinion belongs to Zufar, Zahiris and Zayidis. According to these scholars, if the victim's consent is to death, this consent has no effect on the punishment. In other words, retaliation is applied. The basis of this opinion is the principle that it is not permissible for a person to give permission to be killed. Therefore, if a person gives permission to someone else to kill him, that person permits something he does not own. Permitting to kill a life, even if the one giving permission is the owner of that life, means giving permission to do something that is forbidden. Thus, the person makes something forbidden permissible, which is not permissible. The inviolability of human life is something that cannot be possibly permissible. Therefore, the permission given for killing is void and invalid (Kasani 1996).

The disagreement among the jurists stems from their perspectives on the issue. Each group discussed the effect of the given permission on the punishment by considering the aspect the other did not consider. However, all scholars, especially those who say that no punishment will be given at first, have taken into account the inviolability of life and the prohibition of hostility to life by the Shari. Therefore, they concluded that an attack on life cannot be permissible -even if the owner of the life makes it permissible. On the other hand, 'the person who gives permission to be killed is just like others in terms of his own life. Just as another person cannot permit for another person to be killed and his permission does not exempt the killer from retaliation, the permission that the person will give for his own killing is exactly the same.' (Zahrah 1966).

Medical Will in Terms of Free Will

Using or not using a person's actions and words by their will has important religious and legal consequences. This is because a person's religious and legal responsibility is based on their will. Will consists of two elements: choice and consent. Choice is to prefer doing or not doing something, while consent is to desire something, to do it with pleasure and satisfaction. It is natural for a person to be responsible for the actions and words they do and say by their own consent and choice. Because these are the result of their free will (Karaman 1991).

Information that medical interventions made without the patient's consent and permission will require compensation liability makes it necessary to obtain the patient's permission for treatment according to Islamic law (Qudamah 1968). However, when it comes to medical interventions, Islamic law has imposed restrictions on the individual's control over their body and life. Accordingly, although the body and life are bestowed upon the person, one can only dispose of them in a way that will not harm and in line with the creator's purpose (Mubarak 1997). Because life and body have been given to the person as a trust. As the Prophet expressed, *'The person is held responsible for it until he returns what he has taken'* (Ibn Majah 1999).

Although the patient's consent is required for the legitimacy of medical interventions, it does not seem easy to say that the person is completely autonomous in their decisions on this matter. Because both Allah and the owner of the body have rights over the body that is the subject of medical intervention. In addition, the person's responsibilities to themselves, their family, other people, the state, and their creator also necessarily limit them (Eksi 2011).

On the other hand, autonomy is brought to the forefront as the main reason for debates manifested as euthanasia and the right to die. People want to be the sole decision-maker over their death/life, as in every matter related to themselves. In this context, it is stated that the right to autonomy is the most important value that the person has, and the principle of autonomy is brought instead of the right to life, which is seen as the most important right. Based on this, the refusal of all kinds of treatment or the explicit request to die is constructed as a requirement of respect for the patient's autonomy and dying with dignity (Sibel 1999). From the perspective of

Islamic law, a person does not have the right to choose to continue living or to end it. A person does not have the right to transfer the use of the right to life to others, even if they are their legal representative. Because this means transferring a right that the person does not have to someone else. Therefore, it is absolutely invalid for someone, even if they are a legal representative, to dispose of someone else's life (Kasani 1996).

Reasons such as the patient not knowing the content of the treatments they refuse or accept, not being able to predict what their medical condition will be in the future, prevent us from talking about the patient's full autonomy. Because it is clear that, it would not be healthy to speak about a situation without knowing what the conditions will be in the future, based on probabilities when there is not yet a disease situation. The difference between a healthy situation and a disease in terms of conditions and opportunities is not the same. Therefore, it cannot be thought that the person will have the same consciousness in the decisions to be made in these two situations. Such reasons lead us to the thought that the doctor, who is the expert on the job, should be active when intervention is needed, especially in decisions covering the patient's life.

Medical Will in The Context of Refusing Treatment

A human being is a creature composed of soul and body. Their health depends on both of these aspects being in good health and well-being. However, at certain stages of life, due to this or that reason, disorders called diseases can occur in both physical and mental health. Every medical intervention undertaken by a doctor to cure the disease, or if this is not possible, to alleviate the pains and alleviate the troubles, is called treatment (Shinqiti 1994).

The Prophet stated, '*O servants of Allah! Get treatment. Because Allah has not created any disease without giving its remedy*' (Ibn Majah 1999). He has indicated that every disease has a cure and encouraged to resort to treatment methods. He himself got treatment when he was sick and recommended his close circle and companions to get treatment from Haris ibn al-Khaladh, who was an expert in his field (Nasa'i 2001). The purpose of treatment is primarily to heal the patient, if this is not possible, to alleviate the patient's pains, and to prevent them from falling into the same disease again (preventive medicine) (Jawziyah 1981). Therefore, things that do not aim to achieve these principles are not considered treatment.

Muslim jurists have disagreed on the ruling of treatment. While Hanafis (Kasani 1996), Malikis (Muhanna 1995), and Hanbalis (Jawziyah 1981) generally say that treatment is permissible, Shafi'is believe it is recommended (Nawaw, 2001). However, some of the Shafi'is believe that treatment is obligatory as long as the patient can recover (Mubarak 1997). On the other hand, there have been those who say that treatment is forbidden, citing reliance on God and testing as reasons (Qurtubi 1964). When these views are examined, it is seen that the sects have reached such a conclusion based on diseases that do not pose a danger. However, there is no doubt that treatment is obligatory when it comes to diseases that cause death, the loss or inactivity of an organ, or are contagious. Indeed, it is possible to see this in the decisions taken at the 7th term meeting of the Fiqh Academy Council held in Jeddah in 1992. The Fiqh Academy decisions stated that the treatment ruling will vary according to individuals. That is, 'if there is a risk of loss of life or organ or transmission of the disease to others in case of abandonment, treatment is obligatory, if only physical weakness will be exposed, it is recommended, if there is no risk of exposure to physical weakness, it is permissible, and if its harms contain more danger than the original disease, it is reprehensible' (Kahraman 2011).

On the other hand, it has been permissible for a person in distress to eat forbidden things (al-Quran, al-Maidah 5: 3). However, as Ibn Taymiyah (d. 728/1328) also stated, if he does not eat carrion even though he is obliged to eat it and dies because of this, he becomes a sinner. Similarly, a person who causes his death by refusing to take medicine also becomes a sinner (Ibn Taymiyah 1386).

As far as we understand from the above views, Muslim jurists say that if abandonment leads to death, it is obligatory to get treatment; if it poses a life-threatening risk or if its harm is more than its benefit, it is reprehensible, and in other cases, treatment is recommended, desirable

or permissible. On the other hand, these different views also show us that autonomy is granted to the individual in the choice of treatment; however, this autonomy is limited in case of life-threatening situations.

It is considered permissible not to apply treatment when it is considered conclusive. Ibn al-Qayyum al-Jawziyah (d. 751/1350) stated the doctor needs to refrain from intervening when he thinks that the disease cannot be treated or will not yield results (al-Jawziyah 1981). Accordingly, in such a situation, the doctor should not be greedy and should not start useless treatment. However, since correctly determining the limits of medical futility requires expertise, the decision-making authority in this matter should be expert doctors rather than the patient. When deciding, the doctor should consider the principles accepted as the goals of medicine, 'providing benefit, not causing harm, and justice.'

Treatments that will cause death or severe damage to organs and treatments with a high probability of positive results are generally considered permissible. Therefore, the patient can be granted the right to refuse treatments in the permissible area. Accordingly, if the treatment to be started/started gives the patient impossible new pains, it will be possible to switch to the type of treatment called palliative care (Uymaz 2023), where serious treatments are abandoned and only the patient's pains are alleviated or not to start life-supporting treatments or withdraw them. But here, too, rather than the patient's request, the doctor's analysis that the treatment is futile will be taken as the basis. Indeed, al-Jawziyah (1981) also pointed out the necessity of refraining from intervening in situations where treatment cannot be cured or results cannot be obtained, saying, 'The doctor should not start futile treatment due to greed'. However, since correctly determining the limits of medical futility requires expertise, the decision-making authority in this matter should be expert doctors rather than the patient. Doctors should consider general principles such as 'providing benefit, not causing harm, and justice' in their decisions. On the other hand, whether the treatment is futile or not will sometimes depend on the course of the disease, so it will not be correct for the patient to refuse treatment from the beginning with a medical will.

Medical Will in Terms of the Doctor's Professional Responsibility

A contractual relationship is established between the patient who applies to the doctor for treatment and the doctor. This contract, also referred to as the treatment contract, also forms the legal basis for the rights and responsibilities of the parties. In this case, to speak of a breach of contract, the doctor must not have fulfilled or properly fulfilled one or all of his obligations arising from the treatment contract, such as 'diagnosis and treatment of the disease,' 'informing the patient,' 'showing care,' 'loyalty and confidentiality' (Ayan 1991).

The primary professional responsibilities of the doctor include making the correct diagnosis and choosing the appropriate treatment method for this diagnosis. It is also the responsibility of the doctor to apply tried and tested treatment methods that increase the patient's chance of recovery, taking into account the characteristics of the patient and the disease. On the other hand, it is necessary to inform the patient in detail and obtain his consent to apply methods that have not been sufficiently tested; however, it is necessary to increase the patient's chance of recovery. In addition, according to the rules, the doctor should prefer the least harmful and least dangerous one among the treatment methods that promise the same success: 'When two bad situations are in question, the bigger one is eliminated by preferring, the lighter one' (Berki 1982), and 'Eliminating harm is more important than obtaining benefit. The information given by al-Jawziyah (1981) as the points that the doctor should pay attention to in treatment is remarkable. The doctor:

1. Examines what class the type of disease falls into.
2. Tries to determine why the disease emerged by looking at its cause.
3. Determines whether the patient is resistant to the disease. If he is resistant and able to overcome the disease, he does not resort to medication.
4. Tries to understand the natural and unnatural temperament of the body.

5. Determines the patient's age, homeland, the conditions of his environment, and habits.
6. Determines the current state of the weather during the disease and the current state of the season and sets the necessary rules to be followed.
7. It looks at whether the treatment of the disease is possible. If it is impossible to treat, he protects his art and dignity; greed does not push him to treat with a drug that has no benefit. If it is possible to treat, he looks at whether it can be eliminated. He looks at whether it can be alleviated and reduced if it cannot be eliminated. If it cannot be reduced and sees the best opportunity as stopping it and preventing its progress, he targets this in treatment. He helps the patient to strengthen; he works to weaken the disease.
8. Determines the medicine and dosage that will treat the disease in question.
9. Continues the treatment appropriate for the disease. However, while eliminating the existing disease, the doctor also pays attention to the fact that his treatment does not lead to other diseases. If the therapy he will apply will cause a more complex disease, he will stop the treatment and leave the disease as it is.
10. Should prefer the easiest way in the treatment of the disease. For example, he can only switch from treatment through nutrition to treatment through medication in case of impossibility. He can only use complex medicine after the insufficiency of simple medicine. Treating with nutrition instead of medicine, with simple medicines instead of complex medicines, is within the doctor's competence.
11. The patient should be treated with kindness and gentleness as if treating a child.
12. In addition to the medicines he gives the patient, the doctor should also provide morale to his patient and contribute to his spiritual strength because a patient with high morale recovers faster.
13. He should carry out his treatment and precautions by considering these five principles. These are:
 - a. To protect the current health status.
 - b. To bring back lost health as much as possible.
 - c. To eliminate or reduce the disease as much as possible.
 - d. To endure the less harmful of two evils to eliminate the bigger ones.

This information shows that a doctor-centered approach is adopted in medical interventions between the doctor and the patient for treatment. In this case, the doctor should be the main decision-maker regarding initiating or continuing treatment, although the patient's consent is considered. The doctor's powers in this regard are limited by the principles of 'eliminating harm' and 'giving benefit.' Because the patient's permission for the doctor to dispose of his body is to be treated and ensure his own benefit. Therefore, the right to dispose of the patient disappears when the doctor does not benefit the patient or remove harm from him (Mubarak 1997). By patient benefit here, we mean not the choices made by the patient of his own accord but treatments that will be beneficial for the patient's recovery.

The Medical Will in Terms of Euthanasia

Euthanasia, which in the dictionary means "a good death, an easy and peaceful death," refers, as a term, to the ending of the life of a person suffering from an incurable disease and writhing in pain upon their own or their legal representative's request, using a painless method (İnceoğlu 1999). When a doctor carries out such an act, the particular term "euthanasia" is used in legal literature (Dönmezer 1995). The American Medical Association Council on Ethical and Judicial Affairs (1992) defines the term as follows: "Euthanasia is commonly defined as the act of bringing about the death of a hopelessly ill and suffering person in a relatively quick and painless way for reasons of mercy." (AMAC 1992). Euthanasia is divided into two types in terms of its execution:

1. Active euthanasia: This refers to the deliberate use of substances or methods that shorten or end life to relieve the patient's pain and suffering completely. If the act is

carried out at the request of the patient, it is called voluntary active euthanasia. If the patient is not in a position to express consent, it is referred to as involuntary active euthanasia.

2. **Passive euthanasia:** This refers to the cessation or withdrawal of specific treatments that are essential for the continuation of life. In this type of euthanasia, the person is not actively killed but is, in a sense, left to die. Passive euthanasia can also be voluntary or involuntary (Dönmezer 1995).

Euthanasia, whether active or passive, is prohibited by Islam. The Quran states, "*Do not take a life that Allah has made sacred, except by way of justice*" (al-Quran, al-Isra' 17: 33). This verse emphasizes that human life is sacred, and any deliberate act to end it is considered a major sin. Therefore, a person does not have the right to choose whether to continue or end their life. Not only does an individual lack the right to make such a decision, but they also cannot transfer the right to decide about life, even to a legal representative. This is because it would involve transferring a right that the person does not possess. For this reason, it is entirely invalid for someone, even a legal representative, to make decisions regarding another person's life (Kasani 1996). In this context, it is not only unlawful for a person to request death, but the act of a doctor performing euthanasia, even with the patient's consent, is also illegal (Bilmen 1976).

Although Islamic doctrines do not support the deliberate taking of life, they do permit the cessation of futile medical procedures when death is imminent. According to Islamic medical ethics, if it is clear that further medical intervention will neither alleviate the patient's suffering nor improve their health, allowing the patient to die naturally is acceptable. One typical example discussed in the context of passive euthanasia is the issue of "removal from life support." The Turkish Religious Affairs High Council has deemed it legally acceptable to withdraw a person from life support under the following conditions: A person on life support may be removed if:

1. It has been conclusively determined that the brain has lost all functions,
2. The heart and respiration have wholly stopped,
3. Expert physicians have established that recovery from this condition is impossible.

In such cases, the removal from life support is considered permissible (Diyanet 2012).

In like manner, Islamic Medical Association of North America (IMANA) makes statement that supports discontinuing life support in a vegetative state; however, the statement does not allow withholding nutrition and hydration. The following statement is as follows:

IMANA believes that when death becomes inevitable, as determined by physicians taking care of terminally ill patients, the patient should be allowed to die without unnecessary procedures. While the patient is still alive, all ongoing medical treatments can be continued. IMANA does not believe in prolonging misery on mechanical life support in a vegetative state. All of the procedures of mechanical life support are temporary measures. When a team of physicians, including critical care specialists have determined, no further or new attempt should be made to sustain artificial support. Even in this state, the patient should be treated with full respect, comfort measures and pain control. No attempt should be made to withhold nutrition and hydration. In such cases, if and when the feeding tube has been withdrawn it *may not* be reinserted. The patient should be allowed to die peacefully and comfortably. No attempt should be made to enhance the dying process in patients on life support" (IMANA 2005).

The Council of Islamic Jurisprudence (*Majma' al-Fiqh al-Islami*) restated its position on the issue during its 10th session on 24/2/1408 AH as follows:

In the case of a patient whose body has been hooked up to life support, it is permissible to remove it if all his brain functions have ceased completely, and a committee of three specialist, experienced doctors have determined that this cessation of function is

irreversible, even if the heart and breathing are still working mechanically with the help of the machine (Malik 2024).

As a further stage of treatment preferences, the fact that the medical will makes it possible to refuse all kinds of treatment clearly means that passive euthanasia is included. Passive euthanasia is generally defined as 'the patient being left to natural death as a result of stopping or withdrawing medical treatment necessary for the continuation of the patient's life' or not making interventions that prolong life. Considering the medical will, it is different from passive euthanasia, and generally, 'treatment is not started at all, and the patient decides on this, regardless of the usefulness or futility of the treatment. Probably because ending the started treatment will be emotionally more difficult, the relevant application eliminates this difficulty by not starting the treatment' (Özdemir 2013).

Islamic beliefs prioritize preserving life more than Western perspectives, which often emphasize patient autonomy. In Islamic medical ethics, family members and scholars are consulted in the decision-making process instead of leaving the final decision to the patient. This religious and communal approach highlights that the sanctity of life is more valuable than individual freedom. In this context, during the treatment process, especially in decisions concerning the patient's life, the primary responsibility lies with the competent and knowledgeable physician. The physician's role is crucial and should be active in such situations.

To conclude, in medical interventions concerning a person's life and health, the principle is to obtain their permission out of respect for their will and the rights they possess. However, the person's will and rights in this regard are limited by the principles of 'do no harm' and 'provide benefit.' Therefore, the patient-centered understanding that disregards these principles has been abandoned, and the principle of the main decision being made by the doctor, who is the competent and expert in the job, has been adopted in medical interventions, along with the patient's consent.

Medical 'will' shows some similarities with transactions such as will, power of attorney, guardianship, and trusteeship in Islamic law in some respects. However, features such as the will being a disposition related to death, the formal conditions of power of attorney and trusteeship, and the guardianship including dispositions in favor of the person, prevent these transactions from forming a legal compliance basis for the medical will.

It cannot be expected that the Islamic religion, which prohibits a person from desiring death or praying for death, will allow a person to make a decision that will lead to death. Therefore, even if requests leading to death come from the person himself, it has definitely been forbidden, and the person has been obliged to protect his health and continue his life.

In Islamic law, which accepts the patient's permission as a reason for legal compliance in medical interventions the doctor applies, the patient has also been given the right to refuse treatments included in the permissible area. However, it has been accepted that the doctor's assessment that the treatment is useless should be taken as the basis rather than the patient's request to refuse treatment. Therefore, a medical will containing a request to reject a treatment, the usefulness of which still needs to be clarified, is considered legally invalid. It is clear that it will not be healthy for healthy individuals to speak about a situation they may not have experienced before without knowing what the conditions will show in the future, based on probabilities, when there is no serious illness or situation yet, therefore, in the treatment process, especially in decisions covering the patient's life, the doctor, who carries the primary responsibility and is the expert in the job, should be adequate.

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